



CITY OF LODI COUNCIL COMMUNICATION

AGENDA TITLE: Adopt Resolution Authorizing Administrative Settlement with California Regional Water Quality Control Board for Alleged Discharge Violations and Appropriating Funds (\$21,000)

MEETING DATE: September 3, 2008

PREPARED BY: Public Works Director

RECOMMENDED ACTION: Adopt a resolution authorizing the City Manager to execute a "Waiver of 90-Day Hearing Requirement for Administrative Civil Liability Complaint" for the purpose of remitting payment for the alleged civil liability of \$21,000 to the California Regional Water Quality Control Board (Board) for discharge violations occurring between January 1, 2000 and December 31, 2007 and appropriating \$21,000 from the Wastewater Fund.

BACKGROUND INFORMATION: On May 19, 2008, the City of Lodi received a draft Administrative Civil Liability Complaint (ACLC) from the Board outlining alleged Mandatory Minimum Penalty (MMP) for 53 non-serious discharge violations which occurred over the eight-year period between January 1, 2000 and December 31, 2007. The purported violations are associated with operational upsets, sampling errors, coliform limitation exceedences, and other minor issues. A copy of the ACLC is provided in Exhibit A.

The California Water Code Section 13385 allows the Board to impose administrative civil liabilities (fines) for each discharge violation that qualifies for a MMP. The current MMP for both serious and non-serious violations is \$3,000 per occurrence.

The City's wastewater consultants (West Yost & Associates), along with legal counsel (Somach, Simmons and Dunn), assisted staff in preparing a June 16, 2008 response to the Board (Exhibit B) that outlined the City's position and contended only two of the 53 violations (\$6,000) qualified as MMPs.

Upon review of the City's June 16, 2008 response, the Board agreed to reduce the MMPs from \$159,000 to \$21,000 for seven non-serious discharge violations, all related to coliform and pH, and issued the attached ACLC No. R5-2008-0562.

Staff believes we have reached a point of diminishing returns in negotiating the fine. The costs of engaging Board staff to further argue our position will outweigh the benefit, and it is possible the effort could compromise the City's current relationship with the Board.

Therefore, staff recommends the City pay the reduced fine of \$21,000 and waive the Board hearing requirement in accordance with the terms of Item No. 4 of the "Waiver of 90-Day Hearing Requirement for Administrative Civil Liability Complaint".

APPROVED:

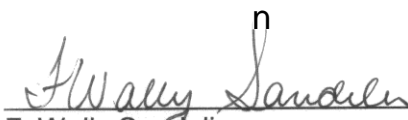

Blair King, City Manager

Adopt Resolution Authorizing City Manager to Execute "Waiver of 90-Day Hearing Requirement for Administrative Civil Liability Complaint" for Purpose of Remitting Payment for Civil Liability of \$21,000 to California Regional Water Quality Control Board for Discharge Violations Occurring between January 1, 2000 and December 31, 2007 and Appropriating Funds (\$21,000)
September 3, 2008
Page 2

FISCAL IMPACT: \$21,000. This cost was not budgeted.

FUNDING AVAILABLE: Requested Appropriation: \$21,000 – Wastewater Fund (170403).



Kirk Evans, Budget Manager

F. Wally Sargelin
Public Works Director

Prepared by Charles Swimley, Water Services Manager

FWS/CES/dg

Attachments

cc: City Attorney
Water Services Manager
Wastewater Treatment Superintendent



Linda S. Adams
 Secretary for
 Environmental
 Protection

California Regional Water Quality Control Board Central Valley Region

Karl E. Longley, ScD, P.E., Chair

11020 Sun Center Drive #200, Rancho Cordova, California 956706114
 Phone (916) 464-3291 • FAX (916) 464-4645
<http://www.waterboards.ca.gov/centralvalley>

Exhibit A



Arnold
 Schwarzenegger
 Governor

14 August 2008

RECEIVED

AUG 18 2008

F. Wally Sandelin
 Public Works Director
 City of Lodi
 P.O. Box 3006
 Lodi, CA 95241-1910



CITY OF LODI
 PUBLIC WORKS DEPARTMENT

CERTIFIED MAIL
 70081140000288054172

ADMINISTRATIVE CIVIL LIABILITY COMPLAINT NO. R5-2008-0562 FOR ASSESSMENT OF MANDATORY MINIMUM PENALTIES, CITY OF LODI WHITE SLOUGH WATER POLLUTION CONTROL FACILITY, SAN JOAQUIN COUNTY

Enclosed is an Administrative Civil Liability Complaint (Complaint), issued pursuant to California Water Code section 13385, for violations of Waste Discharge Requirements (WDRs) Order Nos. 5-00-013 and R5-2007-0113 (NPDES No. CA0079243) by the City of Lodi White Slough Water Pollution Control Facility (Discharger). The Complaint charges the City of Lodi with civil liability in the amount of **twenty one thousand dollars (\$21,000)**, which represents the sum of accrued Mandatory Minimum Penalties for effluent limitation violations which occurred from 1 January 2000 through 31 December 2007.

On 15 May 2008, Regional Water Board staff issued a draft Record of Violations (ROV). On 16 June 2008, the Discharger responded and stated that a number of the violations should be exempted from MMPs. Regional Water Board staff has prepared a technical memorandum analyzing the City's response and has adjusted the number of violations. This technical memorandum and ROV are found as attachments to the Complaint.

Pursuant to CWC section 13323, the Discharger may:

- Pay the assessed civil liability and waive its right to a hearing before the Regional Water Board by signing the enclosed waiver (checking off the box next to item **#4**) and submitting it to this office by **15 September 2008**, along with payment for the full amount;
- Agree to enter into settlement discussions with the Regional Water Board and request that any hearing on the matter be delayed by signing the enclosed waiver (checking off the box next to item **#5**) and submitting it to this office by **15 September 2008; or**
- Contest the Complaint and/or enter into settlement discussions with the Regional Water Board without signing the enclosed waiver.

If the Discharger chooses to sign the waiver and pay the assessed civil liability, this will be considered a tentative settlement of the violations in the Complaint. This settlement will be considered final pending a 30-day period, starting from the date of this Complaint, during

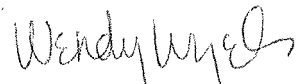
California Environmental Protection Agency

which time interested parties may comment on this action by submitting information to this office, attention Barry Hilton. Should the Regional Water Board receive new information or comments during this comment period, the Regional Water Board's Assistant Executive Officer may withdraw the complaint, return payment, and issue a new complaint.

If the Regional Water Board does not receive a signed waiver within 30 days of the date of this Complaint (**by 15 September 2008**), then a hearing will be scheduled for the **23/24 October 2008** Regional Water Board meeting in Rancho Cordova. Specific notice about this hearing and its procedures will be provided under separate cover.

Any comments or evidence concerning the enclosed Complaint must be submitted to this office, attention Barry Hilton, **no later than 5 p.m. on 15 September 2008**. This includes material submitted by the discharger to be considered at a hearing and material submitted by interested parties, including members of the public, who wish to comment on the proposed settlement. If the Regional Water Board does not hold a hearing on the matter, and the terms of the final settlement are not significantly different from those proposed in the enclosed Complaint, then there will not be additional opportunities for public comment on the proposed settlement. Written materials received after **5 p.m. on 15 September 2008** will not be accepted and will not be incorporated into the administrative record if doing so would prejudice any party.

If you have any questions or comments regarding the Administrative Civil Liability Complaint, please contact Barry Hilton at (916) 464-4762 or Patricia Leary at (916) 464-4623.



WENDY WYELS

Environmental Program Manager
Compliance and Enforcement Section

Enclosure: ACLC No. R5-2008-05XX

cc w/ encl: Ms. Pamela Creedon, Central Valley Water Board, Rancho Cordova
Mr. Kenneth Greenberg, USEPA, Region 9, San Francisco
Mr. Reed Sato, Office of Enforcement, SWRCB, Sacramento
Mr. Patrick Pulupa, Office of Chief Counsel, SWRCB, Sacramento
Ms. Lori Okun, Office of Chief Counsel, SWRCB, Sacramento
Ms. Emel Wadhwani, Office of Chief Counsel, SWRCB, Sacramento
Ms. Carol Oz, Department of Fish and Game, Region 2, Rancho Cordova
San Joaquin County Environmental Health Department, Stockton
Mr. Bill Jennings, California Sportfishing Protection Alliance, Stockton

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
CENTRAL VALLEY REGION

ADMINISTRATIVE CIVIL LIABILITY COMPLAINT NO. R5-2008-0562

MANDATORY PENALTY
IN THE MATTER OF

CITY OF LODI
WHITE SLOUGH WATER POLLUTION CONTROL FACILITY
SAN JOAQUIN COUNTY

This Complaint is issued to the City of Lodi, White Slough Water Pollution Control Facility, (hereafter Discharger) pursuant to California Water Code (CWC) section 13385, which authorizes the imposition of Administrative Civil Liability, CWC section 13323, which authorizes the Executive Officer to issue this Complaint, and CWC section 7, which authorizes the delegation of the Executive Officer's authority to a deputy, in this case the Assistant Executive Officer. This Complaint is based on findings that the Discharger violated provisions of Waste Discharge Requirements (WDRs) Order No. 5-00-031 and R5-2007-0113 (NPDES No. CA0079243).

The Assistant Executive Officer of the Central Valley Regional Water Quality Control Board (Regional Water Board) finds the following:

1. The Discharger owns and operates a wastewater collection, treatment, and disposal system, and provides sewerage service for the City of Lodi. Treated wastewater is discharged to Dredger Cut, tributary to White Slough, tributary to Bishop Cut, tributary to the Sacramento-San Joaquin Delta, a water of the United States.
2. On 28 January 2000, the Regional Water Board adopted WDRs Order No. 5-00-031 to regulate discharges of waste from the water pollution control facility (WPCF).
3. On 10 September 2004, the Regional Water Board adopted Resolution No. R5-2004-0125, which extended certain compliance deadlines contained in WDRs Order No. 5-00-031 from 1 May 2004 to 21 January 2005.
4. On 14 September 2007, the Regional Water Board adopted WDRs Order No. R5-2007-0113, effective 3 November 2007, which contained new requirements and rescinded WDRs Order No. 5-00-031.
5. On 14 September 2007, the Regional Water Board adopted Time Schedule Order (TSO) No. R5-2007-0114, providing a time schedule and establishing interim effluent limits until 17 May 2010 for nitrate, nitrite, and manganese.
6. On 15 May 2008, the Regional Water Board sent the Discharger a draft Record of Violations. On 16 June 2008, the Discharger responded. After consideration of additional information submitted by the Discharger, Regional Water Board staff prepared a technical memorandum, included as Attachment B to this Complaint, and discussed in Finding No. 14 of this Complaint.

7. CWC sections 13385(h) and (i) require assessment of mandatory penalties and state, in part, the following:

CWC section 13385(h)(1) states, *"Notwithstanding any other provision of this division, and except as provided in subdivisions (j), (k), and (l), a mandatory minimum penalty of three thousand dollars (\$3,000) shall be assessed for each serious violation."*

CWC section 13385(h)(2) states, *"For the purposes of this section, a 'serious violation' means any waste discharge that violates the effluent limitations contained in the applicable waste discharge requirements for a Group II pollutant, as specified in Appendix A to Section 123.45 of Title 40 of the Code of Federal Regulations, by 20 percent or more or for a Group I pollutant, as specified in Appendix A to Section 123.45 of Title 40 of the Code of Federal Regulations, by 40 percent or more."*

CWC section 13385(i)(1) states, *"Notwithstanding any other provision of this division, and except as provided in subdivisions (j), (k), and (l), a mandatory minimum penalty of three thousand dollars (\$3,000) shall be assessed for each violation whenever the person does any of the following four or more times in any period of six consecutive months, except that the requirement to assess the mandatory minimum penalty shall not be applicable to the first three violations:*

- A) *Violates a waste discharge requirement effluent limitation.*
- B) *Fails to file a report pursuant to Section 13260.*
- C) *Files an incomplete report pursuant to Section 13260.*
- D) *Violates a toxicity effluent limitation contained in the applicable waste discharge requirements where the waste discharge requirements do not contain pollutant-specific effluent limitations for toxic pollutants."*

- a. CWC section 13323 states, in part: *"Any executive officer of a regional board may issue a complaint to any person on whom administrative civil liability may be imposed pursuant to this article. The complaint shall allege the act or failure to act that constitutes a violation of law, the provision authorizing civil liability to be imposed pursuant to this article, and the proposed civil liability."*
9. WDRs Order No. 5-00-031 Effluent Limitations No. B.1, states, in part: *"The effluent shall not exceed the following limits:"*

<u>Constituents</u>	<u>Units</u>	<u>Monthly Average</u>	<u>Weekly Average</u>	<u>Daily Average</u>	<u>Daily Maximum</u>
Total Suspended Solids	mg/L	20 ²	40 ²		50 ²

² To be ascertained by a flow proportional 24-hour composite sample.

10. WDRs Order No. 5-00-031 Effluent Limitations No. B.2, states, in part: *"Interim total coliform organism and BOD wastewater effluent limits shall be in effect through 30 April 2004. The interim effluent limits are as follows:"*

<u>Constituents</u>	<u>Units</u>	<u>Monthly Average</u>	<u>Weekly Average</u>	<u>Daily Maximum</u>
Total Coliform	MPN/100mL	23 ¹	--	500

¹ Monthly median value.

This deadline was extended by Resolution R5-2004-0125 to 21 January 2005.

11. WDRs Order No. 5-00-031 Effluent Limitations No. B.3., states, in part: *"The effluent shall not exceed the following limits in accordance with the time schedule in Provision H.2."*

<u>Constituents</u>	<u>Units</u>	<u>Daily Average</u>	<u>Monthly Average</u>	<u>Weekly Average</u>	<u>Daily Maximum</u>
Total Coliform Organisms	MPN/100mL	--	--	2.2 ⁴	23

⁴ As a 7-day median.

Provision H.2 was amended by Resolution No. R5-2004-0125 to extend the time schedule for full compliance to 21 January 2005 from 30 April 2004.

12. WDRs Order No. 5-00-031 Effluent Limitations B.7., requires, in part, *"The discharge shall not have a pH less than 6.5 nor greater than 8.5."*

13. WDRs Order No. R5-2007-0113 Effluent Limitations No. IV.A.I.e., Total Coliform Organisms, states: *"Effluent total coliform organisms shall not exceed:*

- i. 2.2 most probable number (MPN) per 100mL, as a 7-day median; and*
- ii. 23 MPN/100 mL, more than once in any 30-day period."*

14. As described in the technical memorandum mentioned in Finding No. 6, the Regional Water Board makes the following adjustments to the draft Record of Violations (all violation numbers reference those contained in the draft Notice of Violation).

- Total Coliform Organisms Violations 2-4, 32-36, 38-39. The Discharger claimed exemption from Mandatory Minimum Penalties because of a single operational upset. These violations were retained because the violations did not meet the Water Quality Enforcement Policy's standard for a single operational upset.
- Total Coliform Organisms Violations 13-31. The Discharger documented that the violations were due to an improper sampling location; therefore, they were deleted.
- Total Coliform Organisms Violations 32, 34-36, 39, 41-16, 51-52, 54, 57-62, 64-68, and 70. The Discharger requested that coliform results be one median violation per week. The effluent coliform limitation can be interpreted to be a static 7-day median. These violations were dismissed.

- Total Coliform Organisms Violation 71. The Discharger documented that the exceedance was due to a sampling error and further documented that it had previously documented the sampling error. This violation was dismissed.
 - pH Violation 37. The Discharger claimed that this was not a violation because it only lasted three hours. This violation was retained but did not result in assessment of an **MMP** because it was only the second violation during the preceding 180 days.
 - No Surface Water Discharge Violations 46 and 54. The Discharger documented that there was no discharge to surface waters. These violations were dismissed.
 - Liability Adjustments Violations 37, 48, 49, 53, and 56. Violations 37, 48, 49, 53, and 56, after deleting other violations, are the third or fewer violations during a preceding 180 day period and do not result in assessed MMPs.
15. According to the Discharger's self-monitoring reports, the Discharger committed twenty-five (25) non-serious violations of the above effluent limitations contained in Order Nos. 5-00-031 and R5-2007-0113 during the period beginning 1 January 2000 and ending 31 December 2007. Seven (7) of the non-serious violations are subject to mandatory penalties under CWC section 13385(i)(1) because these violations were preceded by three or more similar violations within a six-month period. The mandatory minimum penalty for these non-serious violations **is twenty-one thousand dollars (\$21,000)**.
16. The total amount of the mandatory penalties assessed for the cited effluent violations is **twenty-one thousand dollars (\$21,000)**. A detailed list of the cited effluent violations is included in Attachment A, a part of this Complaint.
17. Issuance of this Administrative Civil Liability Complaint to enforce CWC Division 7, Chapter 5.5 is exempt from the provisions of the California Environmental Quality Act (Pub. Resources Code section 21000 et seq.), in accordance with California Code of Regulations, title 14, section 15321(a)(2).

**THE CITY OF LODI WHITE SLOUGH WATER POLLUTION CONTROL FACILITY IS
HEREBY GIVEN NOTICE THAT:**

1. The Assistant Executive Officer of the Regional Water Board proposes that the Discharger be assessed an Administrative Civil Liability in the amount of **twenty-one thousand dollars (\$21,000)**.
2. A hearing on this matter will be held at the Regional Water Board meeting scheduled on **23/24 October 2008**, unless the Discharger does either of the following by **15 September 2008**:

ADMINISTRATIVE CIVIL LIABILITY COMPLAINT NO. R5-2008-0562
MANDATORY PENALTY
CITY OF LODI
WHITE SLOUGH WATER POLLUTION CONTROL FACILITY
SAN JOAQUIN COUNTY

-5-

- a) Waives the hearing by completing the attached form (checking off the box next to item #4) and returning it to the Regional Water Board, along with payment for the proposed civil liability of **twenty-one thousand dollars (\$21,000)**; or
 - b) Agrees to enter into settlement discussions with the Regional Water Board and requests that any hearing on the matter be delayed by signing the enclosed waiver (checking off the box next to item #5) and returning it to the Regional Water Board.
3. If a hearing on this matter is held, the Regional Water Board will consider whether to affirm, reject, or modify the proposed Administrative Civil Liability, or whether to refer the matter to the Attorney General for recovery of judicial civil liability.



JACK E. DEL CONTE, Assistant Executive Officer

14 August 2008

Attachment A: Record of Violations
Attachment B: Technical Memorandum
BLH: 08/14/08

**WAIVER OF 90-DAY HEARING REQUIREMENT FOR
ADMINISTRATIVE CIVIL LIABILITY COMPLAINT**

By signing this waiver, I affirm and acknowledge the following:

1. I am duly authorized to represent the City of Lodi, White Slough Water Pollution Control Facility (hereinafter "Discharger") in connection with Administrative Civil Liability Complaint No. R5-2008-0562 (hereinafter the "Complaint");
 2. I am informed that California Water Code section 13323, subdivision (b), states that, "a hearing before the regional board shall be conducted within 90 days after the party has been served" with the Complaint;
 3. I hereby waive any right the Discharger may have to a hearing before the California Regional Water Quality Control Board, Central Valley Region (Regional Water Board) within ninety (90) days of service of the Complaint; and
 4. ☐ **(Check here if the Discharger will waive the hearing requirement and will pay the fine)**
 - a. I certify that the Discharger will remit payment for the civil liability imposed in the amount of **twenty-one thousand dollars (\$21,000)** by check, which contains a reference to "ACL Complaint No. R5-2008-0562" and is made payable to the "State Water Pollution Cleanup and Abatement Account." Payment must be received by the Regional Water Board by **15 September 2008** or this matter will be placed on the Regional Water Board's agenda for adoption as initially proposed in the Complaint.
 - b. I understand the payment of the above amount constitutes a settlement of the Complaint, and that any settlement will not become final until after the 30-day public notice and comment period mandated by Federal regulations (40 CFR 123.27) expires. Should the Regional Water Board receive new information or comments during this comment period, the Regional Water Board's Assistant Executive Officer may withdraw the complaint, return payment, and issue a new complaint. New information or comments include those submitted by personnel of the Regional Water Board who are not associated with the enforcement team's issuance of the Complaint.
 - c. I understand that payment of the above amount is not a substitute for compliance with applicable laws and that continuing violations of the type alleged in the Complaint may subject the Discharger to further enforcement, including additional civil liability.
- or-**
5. ☐ **(Check here if the Discharger will waive the 90-day hearing requirement, but will not pay at the current time)** I certify that the Discharger will promptly engage the Regional Water Board staff in discussions to resolve the outstanding violation(s). By checking this box, the Discharger is not waiving its right to a hearing on this matter. I understand that this waiver is a request to delay the hearing so the Discharger and Regional Water Board staff can discuss settlement. It does not constitute the Regional Water Board's agreement to delay the hearing. A hearing on the matter may be held before the Regional Water Board if these discussions do not resolve the liability proposed in the Complaint. The Discharger agrees that this hearing may be held after the 90-day period referenced in California Water Code section 13323 has elapsed.
 6. If a hearing on this matter is held, the Regional Water Board will consider whether to issue, reject, or modify the proposed Administrative Civil Liability Order, or whether to refer the matter to the Attorney General for recovery of judicial civil liability.

(Print Name and Title)

(Signature)

(Date)

ATTACHMENT A
ADMINISTRATIVE CIVIL LIABILITY COMPLAINT NO. R5-2008-0562

City of Lodi

White Slough Water Pollution Control Facility

RECORD OF VIOLATIONS (1 January 2000 – 31 December 2007) MANDATORY PENALTIES
(Data reported under Monitoring and Reporting Program Nos. 5-00-031 and R5-2007-0113)

	<u>Date</u>	<u>Violation Type</u>	<u>Units</u>	<u>Limit</u>	<u>Measured</u>	<u>Period Type</u>	<u>Remarks</u>
1	24-Feb-00	pH	pH units	6.5	6.4	Instantaneous	3
2	21-Oct-00	Coliform	MPN/100ml	500	1600	Daily	3
3	28-Oct-00	Coliform	MPN/100ml	500	1600	Daily	3
4	11-Nov-00	Coliform	MPN/100ml	500	1600	Daily	3
5	28-Jan-01	pH	pH units	6.5	6.3	Instantaneous	4
6	22-Feb-01	Coliform	MPN/100ml	500	1600	Daily	4
7	26-Feb-01	pH	pH units	6.5	6.4	Instantaneous	4
8	22-Oct-01	TSS	mg/L	50	51	Daily	3
9	7-Feb-02	Coliform	MPN/100ml	500	1600	Daily	3
10	13-NOV-02	TSS	mg/L	50	67	Daily	3
11	24-Dec-02	Coliform	MPN/100ml	500	900	Daily	3
12	6-Mar-03	Coliform	MPN/100ml	500	1600	Daily	3
13	8-NOV-05	Coliform	MPN/100ml	23	50	Daily	3
14	11-Nov-05	pH	pH units	6.5	6.4	Instantaneous	3
15	12-NOV-05	Coliform	MPN/100ml	2.2	8	7-day	3
16	29-NOV-05	Coliform	MPN/100ml	23	50	Daily	4
17	3-Apr-06	Coliform	MPN/100ml	23	50	Daily	4
18	13-Oct-06	Coliform	MPN/100ml	23	30	Daily	3
19	30-Oct-06	Coliform	MPN/100ml	23	30	Daily	3
20	12-Mar-07	Coliform	MPN/100ml	23	50	Daily	3
21	4-Sep-07	Coliform	MPN/100ml	23	50	Daily	3
22	15-Sep-07	Coliform	MPN/100ml	23	80	Daily	3
23	15-Sep-07	Coliform	MPN/100ml	2.2	3	7-day	4
24	22-Sep-07	Coliform	MPN/100ml	2.2	7	7-day	4
25	29-Sep-07	Coliform	MPN/100ml	2.2	7	7-day	4

Remarks:

1. Serious Violation: For Group I pollutants that exceed the effluent limitation by 40 percent or more.
2. Serious Violation: For Group II pollutants that exceed the effluent limitation by 20 percent or more.
3. Non-serious violations falls within the first three violations in a six-month period, thus is exempt.
4. Non-serious violation subject to mandatory penalties.

VIOLATIONS AS OF: 12/31/2007

Group I Serious Violations:	0
Group II Serious Violations:	0
Non-Serious Exempt from MPs:	18
Non-serious Violations Subject to MPs:	7
<u>Total Violations Subject to MPs:</u>	<u>7</u>

Mandatory Minimum Penalty = (0 Serious Violations + 7 Non-Serious Violations) x \$3,000 = \$21,000



California Regional Water Quality Control Board Central Valley Region

Karl E. Longley, ScD, P.E., Chair



Linda S. Adams
Secretary for
Environmental
Protection

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Arnold
Schwarzenegger
Governor

TO: Patricia Leary, Senior Engineer
NPDES Compliance and Enforcement

FROM: Barry Hilton, WRCE
NPDES Compliance and Enforcement

DATE: 14 August 2008

SIGNATURE: 

SUBJECT: CITY OF LODI, WHITE SLOUGH WATER POLLUTION CONTROL FACILITY

On 15 May 2008, the Regional Water Board sent the City of Lodi, White Slough WWTP (Discharger) a Notice of Violation and a draft Record of Violations for the period of 1 January 2000 through 31 December 2007. The Discharger responded by letter dated 16 June 2008.

Statute of Limitations

The Discharger requested that the Regional Water Board consider the 5-year statute of limitations under the Clean Water Act and the 3-year statute of limitations contained in the California Code of Civil Procedure, section 338. The former of these two statutes of limitation applies to actions by the federal government, and the latter of these statutes of limitation does not apply to this type of administrative proceeding.

The Code section of which §338 is a part makes it clear that §338 applies only to time limits on the commencement of civil suits in the courts. §338 is a part of Chapter 1 of Title 2 of the Code of Civil Procedure, entitled "Of the Time of Commencing Civil Actions." The first section in Chapter 1 of Title 2 reads, in pertinent part, as follows:

"§3 12. General Limitations; Special Cases: Civil actions, without exception, can only be commenced within the periods prescribed in this title..."

It is clear from a mere reading of this language that Title 2 is intended to prescribe time periods for the bringing of civil law suits. This administrative complaint falls outside the scope of this section. (See also *Bernd v. Eu* (1979) 100 Cal.App.3d 511, 161 Cal.Rptr. 58; *Rudolph v. Athletic Commission* (1960) 177 Cal.App.2d 1, 22, 1 Cal.Rptr. 898).

Total Coliform Organisms

Violations 2-4. The Discharger claimed a single operational upset (SOU). The Discharger stated that readjustments in its nitrification process resulted in violations of the coliform limitation. CWC 13385(f) protects the discharger from MMPs if the operational upset results in violations of one or more effluent limitations and also *"But for the operational upset of the biological treatment process, the violations would not have occurred nor would they have continued for more than one day... [and]... the discharger carried out all reasonable and immediately feasible actions to reduce noncompliance..."* The violations were coliform violations (daily), there were no other violations, the violations occurred on three different occasions over a period of three weeks. In my professional opinion, this was a failure to disinfect adequately. I retained the violations. This had no effect on the number of violations subject to MMPs because there were only 3 violations during a 180 day period.

Violations 13-31. The Discharger documented that, during start-up of the new tertiary filtration and UV disinfection facilities, the measured violations were the result of an improper sampling location and that moving the sampling location closer to the discharge of the disinfection system resulted in no violations. I deleted these violations because I concur with the Discharger's arguments that these violations were exempt as a result of an improper sampling location.

Violations 32-36, 38-39. The discharger requested consideration as an SOU because effluent turbidities reduced the effectiveness of the UV disinfection system. These do not qualify as an SOU because the Discharger did not violate the effluent turbidity limitations or any other limitations. I consider this an operational error. I disagreed with the claim for an SOU.

Violations 32, 34-36, 39, 41-46, 51-52, 54, 57-62, 64-68, and 70. WDRs Order No. 5-00-131 states that the weekly average coliform is to be determined as a 7-day median. The Discharger requested that coliform results be one median violation per week. I agree that the 7-day median can be interpreted as a static weekly median, rather than a rolling 7-day median. I reanalyzed the analytical results using a static weekly period (Sunday through Saturday). I deleted violations 32, 34-36, 39, 41-46, 51-52, 54, 57-62, 64-68, and 70 because these were improperly calculated as rolling 7-day medians rather than weekly medians specified by the WDRs.

Violation 71. The Discharger documented that the exceedance was due to a sampling error and further documented that it had previously documented the sampling error. I deleted this violation.

pH

Violation 37. WDRs order 5-00-031 Effluent limitation B.7 states: "*The discharger shall not have a pH less than 6.5 nor than greater than 8.5.*" The Discharger stated that the pH was 6.44-6.45 for 3 hours. This was a violation because the discharge pH was less than 6.5. I changed the violation from remarks 4 to remarks 3 because there were only two violations during the 180 day period. I retained the violation but it will not result in an MMP.

No Surface Water Discharge

Violations 46, 54. The Discharger documented that there was no discharge to surface waters. I deleted the violations.

Liability Adjustments

Violations 37, 48, 49, 53, and 56. After deleting other violations, violations 37, 48, 49, 53, and 56, non-serious violations, are the third or fewer violation during a preceding 180 day period and therefore do not result in assessed MMPs.

Summary

The total number of Group 1 violations is 0.

The total number of Group 2 violations is 0.

The total number of Group 3 violations is 25; 8 are subject to MMPs.

The ACL decreases from \$159,000 to \$21,000.

ATTACHMENT A
ADMINISTRATIVE CIVIL LIABILITY COMPLAINT R5-2008-0562

City of Lodi

White Slough Wastewater Treatment Plant

RECORD OF VIOLATIONS (1 January 2000 – 31 December 2007) MANDATORY PENALTIES
(Data reported under Monitoring and Reporting Program Nos. 5-00-031 and R5-2007-0113)

		<u>Date</u>	<u>Violation Type</u>	<u>Units</u>	<u>Limit</u>	<u>Measured</u>	<u>Period Type</u>	<u>Remarks</u>
1	1	24-Feb-00	pH	pH units	6.5	6.4	Instantaneous	3
2	2	21-Oct-00	Coliform	MPN/100ml	500	1600	Daily	3
3	3	28-Oct-00	Coliform	MPN/100ml	500	1600	Daily	3
4	4	11-Nov-00	Coliform	MPN/100ml	500	1600	Daily	3
5	5	28-Jan-01	pH	pH units	6.5	6.3	Instantaneous	4
6	6	22-Feb-01	Coliform	MPN/100ml	500	1600	Daily	4
7	7	26-Feb-01	pH	pH units	6.5	6.4	Instantaneous	4
8	8	22-Oct-01	TSS	mg/L	50	51	Daily	3
9	9	7-Feb-02	Coliform	MPN/100ml	500	1600	Daily	3
10	10	13-Nov-02	TSS	mg/L	50	67	Daily	3
11	11	24-Dec-02	Coliform	MPN/100ml	500	900	Daily	3
12	12	6-Mar-03	Coliform	MPN/100ml	500	1600	Daily	3
13		1-Feb-05	Coliform	MPN/100ml	2.2	7	7-day	3
14		2-Feb-05	Coliform	MPN/100ml	2.2	7	7-day	3
15		3-Feb-05	Coliform	MPN/100ml	2.2	7	7-day	3
16		4-Feb-05	Coliform	MPN/100ml	2.2	8	7-day	4
17		5-Feb-05	Coliform	MPN/100ml	2.2	7	7-day	4
18		6-Feb-05	Coliform	MPN/100ml	2.2	7	7-day	4
19		7-Feb-05	Coliform	MPN/100ml	2.2	8	7-day	4
20		8-Feb-05	Coliform	MPN/100ml	2.2	8	7-day	4
21		9-Feb-05	Coliform	MPN/100ml	2.2	8	7-day	4
22		10-Feb-05	Coliform	MPN/100ml	2.2	8	7-day	4
23		11-Feb-05	Coliform	MPN/100ml	2.2	8	7-day	4
24		12-Feb-05	Coliform	MPN/100ml	2.2	8	7-day	4
25		13-Feb-05	Coliform	MPN/100ml	2.2	7	7-day	4
26		14-Feb-05	Coliform	MPN/100ml	2.2	7	7-day	4
27		15-Feb-05	Coliform	MPN/100ml	2.42	7	7-day	4
28		16-Feb-05	Coliform	MPN/100ml	2.2	4	7-day	4
29		17-Feb-05	Coliform	MPN/100ml	2.2	4	7-day	4
30		18-Feb-05	Coliform	MPN/100ml	2.2	4	7-day	4
31		19-Feb-05	Coliform	MPN/100ml	2.42	4	7-day	4
32		8-Nov-05	Coliform	MPN/100ml	2.42	8	7-day	3
33	13	8-Nov-05	Coliform	MPN/100ml	23	50	Daily	3
34		9-Nov-05	Coliform	MPN/100ml	2.2	8	7-day	3
35		10-Nov-05	Coliform	MPN/100ml	2.42	8	7-day	4
36		11-Nov-05	Coliform	MPN/100ml	2.42	8	7-day	4
37	14	11-Nov-05	pH	pH units	6.5	6.4	Instantaneous	34
38	15	12-Nov-05	Coliform	MPN/100ml	2.2	8	7-day	34
39		13-Nov-05	Coliform	MPN/100ml	2.2	4	7-day	4
40	16	29-Nov-05	Coliform	MPN/100ml	23	50	Daily	4
41		30-Nov-05	Coliform	MPN/100ml	2.42	4	7-day	4
42		1-Dec-05	Coliform	MPN/100ml	2.2	4	7-day	4
43		2-Dec-05	Coliform	MPN/100ml	2.2	4	7-day	4
44		4-Dec-05	Coliform	MPN/100ml	2.42	4	7-day	4
45		5-Dec-05	Coliform	MPN/100ml	2.2	4	7-day	4

		<u>Date</u>	<u>Violation Type</u>	<u>Units</u>	<u>Limit</u>	<u>Measured</u>	<u>Period Type</u>	<u>Remarks</u>
46		23-Dec-05	Coliform	MPN/100ml	23	30	Daily	4
47	17	3-Apr-06	Coliform	MPN/100ml	23	50	Daily	4
48	18	13-Oct-06	Coliform	MPN/100ml	23	30	Daily	34
49	19	30-Oct-06	Coliform	MPN/100ml	23	30	Daily	34
50	20	12-Mar-07	Coliform	MPN/100ml	23	50	Daily	3
51		17-Mar-07	Coliform	MPN/100ml	2.2	4	7-day	4
52		18-Mar-07	Coliform	MPN/100ml	2.2	4	7-day	4
53	21	4-Sep-07	Coliform	MPN/100ml	23	50	Daily	34
54		14-Sep-07	Coliform	MPN/100ml	2.2	3	7-day	3
55	22	15-Sep-07	Coliform	MPN/100ml	23	80	Daily	3
56	23	15-Sep-07	Coliform	MPN/100ml	2.2	3	7-day	4
57		16-Sep-07	Coliform	MPN/100ml	2.2	6	7-day	4
58		17-Sep-07	Coliform	MPN/100ml	2.2	6	7-day	4
		18-Sep-07	Coliform	MPN/100ml	2.2		7-day	4
60		19-Sep-07	Coliform	MPN/100ml	2.2	10.5	7-day	4
61		20-Sep-07	Coliform	MPN/100ml	2.2	10.5	7-day	4
62		21-Sep-07	Coliform	MPN/100ml	2.2	8	7-day	4
63	24	22-Sep-07	Coliform	MPN/100ml	2.2	7	7-day	4
64		24-Sep-07	Coliform	MPN/100ml	2.2	4	7-day	4
65		25-Sep-07	Coliform	MPN/100ml	2.2	4	7-day	4
66		26-Sep-07	Coliform	MPN/100ml	2.2	4	7-day	4
67		27-Sep-07	Coliform	MPN/100ml	2.2	4	7-day	4
68		28-Sep-07	Coliform	MPN/100ml	2.2	4	7-day	4
69	25	29-Sep-07	Coliform	MPN/100ml	2.2	7	7-day	4
70		30-Sep-07	Coliform			7	7-day	4
71		20-Dec-07	Coliform	MPN/100ml	240	1600	Instant Max	4

Remarks:

1. Serious Violation: For Group I pollutants that exceed the effluent limitation by 40 percent or more.
2. Serious Violation: For Group II pollutants that exceed the effluent limitation by 20 percent or more.
3. Non-serious violations falls within the first three violations in a six-month period, thus is exempt.
4. Non-serious violation subject to mandatory penalties.

<u>VIOLATIONS AS OF:</u>	<u>12/31/2007</u>
Group I Serious Violations:	0
Group II Serious Violations:	0
Non-Serious Exempt from MPs:	18
Non-serious Violations Subject to MPs:	<u>753</u>
<u>Total Violations Subject to MPs:</u>	<u>753</u>

Mandatory Minimum Penalty = (0 Serious Violations + 753 Non-Serious Violations) x \$3,000 = \$45921,000

CITY COUNCIL

JOANNE MOUNCE,
Mayor

LARRY D. HANSEN,
Mayor Pro Tempore

SUSAN HITCHCOCK

BOB JOHNSON

PHIL KATZAKIAN

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BLAIR KING,
City Manager

RANDI JOHL,
City Clerk

D. STEPHEN SCHWABAUER,
City Attorney

F. WALLY SANDELIN
Public Works Director

June 16,2008

Ms. Patricia Leary
Senior Engineer, NPDES Compliance and Enforcement Unit
California Regional Water Quality Control Board
Central Valley Region
11020 Sun Center Drive #200
Rancho Cordova CA 95670-6114

SUBJECT: Administrative Civil Liability Complaint- Mandatory Minimum Penalties
City of Lodi White Slough Water Pollution Control Facility
Order Number R5-2007-0113 and R5-00-031

Dear Ms. Leary:

The purpose of this letter is to present the City of Lodi's (City's) review of the draft Record of Violations (draft record) issued by the Central Valley Regional Water Quality Control Board (Regional Board) on May 19, 2008. The draft record outlines the alleged violations of effluent limitations that have occurred since February 24, 2000¹ at the City's White Slough Water Pollution Control Facility (WPCF), and that are subject to mandatory minimum penalties (MMPs).

The WPCF discharge is currently permitted under Waste Discharge Requirements (WDRs) Order No. R5-2007-0113, which was adopted by the Regional Board on September 14, 2007. Prior to this, the WPCF was regulated under WDR Order No. R5-00-031. The majority of violations outlined in the Regional Board's May 19 letter occurred while the WPCF was regulated under the previous WDRs.

This letter specifically addresses a number of coliform violations that the City contends were either a result of process upsets or were falsely reported values resulting from

¹ The City believes imposition of penalties for violations occurring more than three years ago is barred by the statute of limitations under the Porter-Cologne Water Quality Act (Code of Civ. Proc. §338(i)). At a minimum, a five year statute of limitations applies under federal law, as Chapter 5.5 of the Water Code to be construed "to ensure consistency" with the requirements for state programs implementing the Clean Water Act (CWC § 13372(a)), and the statute of limitations for penalties assessed pursuant to the Clean Water Act is five years. (28 U.S.C. §2462; see also *Public Interest Research Group of New Jersey, Inc. v. Powell Duffryn Terminals*, 913 F.2d 64, 75 (3rd Cir. 1990)). If the Regional Board intends to assess penalties outside the allowable time periods, the City requests that the Regional Board explain the legal basis for this action.

sampling error. In addition, the City contends that the 7-day median coliform limitation as prescribed in the previous permit is a fixed weekly limit, not a running median as has been suggested by the Regional Board. Finally, a discussion of the City's concerns regarding a pH violation (violation 37) and a violation that occurred when the City was not discharging to surface water (violation 46) are also discussed in this letter.

Operational Upset

Violations 2 through 4

The draft record lists violations of the daily maximum coliform limitation on October 21, 2000; October 28, 2000; and November 11, 2000; respectively. As documented in the City's monthly self-monitoring reports for October and November 2000, these exceedances were a result of a failure in the WPCF's nitrification process. The City has elaborated on this issue in its November 2, 2000, and November 17, 2000 submissions to the Regional Board, which are attached to this letter. As documented, the WPCF experienced nitrification process upsets due to weather changes during this period. This was initially managed by increasing the solids retention time (SRT) to improve the process of converting ammonia to nitrate; however, a change in SRT requires some time to impact the nitrification process. Following these efforts, it appeared that the issue had been resolved; however, there was a coliform exceedance on November 11, 2000, indicating persistent effects of the nitrification upsets. Therefore, the City diverted its flows to the holding ponds to resume discharge on complete stabilization of the nitrification process. For these reason, the City contends that violations 2, 3 and 4 fall under the CWC Section 13385(f) definition of violations caused by an "operational upset". Moreover, these violations were unavoidable and occurred within a 30-day period, as specified by CWC Section 13385(f). Therefore, the City requests that the Regional Board designate these simultaneous violations as a single violation for purposes of assessing the applicable mandatory minimum penalties.

Violations 32 through 36, and 38 through 39

Exceedances of the daily maximum coliform limitation on November 8, 2005 (violation 33), and the 7-day median coliform limitation between November 8 and November 13, 2005 (violations 32, 34 – 36, and 38 - 39) also should be considered as a single violation resulting from an operational upset in accordance with CWC Section 13385(f). As documented in the City's November 18, 2005 submission to the Regional Board (attached), the November 8 daily maximum violation was caused indirectly from increased turbidity in the **UV** disinfection system. Although the turbidity levels were below the prescribed effluent limitation, the short-term turbidity increase interfered with the **UV** disinfection resulting in the exceedances of the effluent coliform. Since this occurrence, the City has taken the precaution of increasing the **UV** dose during periods of high turbidity, and furthermore, the City has programmed the SCADA system to detect fluctuations of effluent parameters in order to act to avoid further violations. Therefore, the City requests that the Regional Board designate these simultaneous violations as a single violation for purposes of assessing the applicable mandatory minimum penalties.

Violations 54 through 70

A number of violations of the 7-day median coliform limitation occurred in September 2007 (violations 54 through 70), including one exceedance of the daily maximum coliform limitation. Initially, the City believed that the failure of a hydraulic pump caused failure of the cleaning system for one of the **UV** channels, ultimately reducing disinfection capability. This was documented in the City's September 24, 2007 letter to

the Regional Board, which is attached. A second letter sent to the Regional Board on October 24, 2007 (also attached) further documented the issue, stating that the coliform exceedances were more likely caused by the construction activities associated with the City's Phase III Improvement Project. Specifically, the construction work required bypassing around the headworks facility, causing an upset in the secondary processes, which resulted in a temporary change in the flows and loading to the disinfection process. The City had also sent a letter to the Regional Board on April 25, 2007 (also attached), advising the Regional Board of the components of the City's Phase III Improvement Project that may cause a plant upsets. This letter specifically included an operations plan describing how the bypass pumping will be limited to the September 15 through November 30 period to minimize the potential impacts. (Note that the contractor actually began the bypass on September 12.) Therefore, the City contends that these violations should be exempt from MMPs in accordance with CWC Section 13385(j).

Sampling Error

Violations 13 through 31

Nineteen alleged violations of the 7-day median effluent limitation occurred during February 2005 (violations 13 through 31). These violations were encountered during the startup of the City's new tertiary filtration and UV disinfection facilities. During this period, the City was monitoring effluent coliform at a location downstream from the UV disinfection facility that was later determined to not reflect actual treatment performance. Once the monitoring location was moved to the immediate outlet from the UV facility, the coliform measurements were within the allowable limits. Thus, the reported results were not reflective of actual effluent quality and constitute over-reporting. Under the Clean Water Act's strict liability scheme, a permittee violates the Clean Water Act if it **discharges** pollutants in violation of its permit, without regard to intent. Case law has confirmed that "strict liability does not mean that a permittee may be held liable for violating its permit even if it does not in fact do so." (*United States v. Allegheny Ludlum Corp.* (3d Cir. 2004) 366 F.3d 164, 175.) The Regional Board must have evidence that the permit was in fact violated. Therefore, the City requests that violations 13 through 31 be removed from the record.

Violation 71

The draft record lists a violation of the coliform limitation on December 20, 2007; however, City's monthly self-monitoring report indicated that this exceedance was recorded due to a sampling error. This was further documented in the City's December 26, 2007 letter to the Regional Board, which is attached. Thus, the reported results were not reflective of actual effluent quality and constitute over-reporting. As stated above, the Regional Board must have evidence that the permit was in fact violated. Therefore, the City requests that violation 71 be removed from the record.

7-Day Median Limitations for Coliform

Violations 13 through 31, 32, 34 through 36, 38, 39, 41 through 45, 51, 52, 54 through 70

If these violations are not considered one violation due to upset conditions or removed from the record altogether for the reasons outlined above, the City contends that the number of violations should be reduced, as the previous WDRs do not specify that the

"7-day median" is to be calculated as a rolling median.² State Water Board guidance on implementing the MMP law provides that:

In the usual case, if the discharger exceeds an average or median effluent limitation based on a static period of time (e.g., monthly or weekly averages), it would be considered only one violation for the month or the week for the purposes of calculating mandatory penalties, as described above. Exceedances of effluent limitations **where it is specified that the average or median will be computed on a rolling basis (calculated daily)**, however, would be considered to be violations for each new time period that the average or median was exceeded. The permit, the applicable water quality control plan, and U.S. EPA guidance should be reviewed to determine how to calculate the number of violations in these cases. (SB 709 Questions and Answers, State Water Resources Control Board, April 17, 2001, pp. 15-16. (emphasis added).)

Given that the prior WDRs, unlike other permits issued by the Regional Water board, does not specify that a rolling median is to be used, the violations should be calculated using a fixed 7-day median. Assuming the 7-day median would coincide with a weekly occurrence (Monday through Sunday), the number of violations listed above would be reduced from 51 to 9.

Other Issues

Analytical Accuracy of pH Monitoring Equipment: Violation 37

The draft record lists a violation of the daily pH limitation on November 11, 2005. However, as documented in the attached November 18, 2005 submission to the Regional Board, the pH was measured at **6.44 - 6.45** for only about three hours on November 11, 2005 and pH was within allowable limits prior to and after this time period, demonstrating compliance during the greater part of the same day. Moreover, the level of accuracy of the City's pH metering equipment is such that the **6.44** value is not sufficiently precise to conclude that the effluent did not meet the 6.5 minimum pH limitations in the WDRs. Therefore, the City requests that the Regional Board eliminate this alleged violation from the record of violations subject to MMPs.

No Surface Water Discharge: Violation 46

The draft record lists a violation of the coliform limitation on December 23, 2005; however, as documented in the City's monthly self-monitoring report for December 2005, the City was not discharging to surface water on this date. Therefore, this coliform measurement does not violate the City's WDR limitations. The City requests that the Regional Board eliminate this alleged violation from the record of violations subject to MMPs.

A summary of the City's responses is provided in the attached table. Assuming the Regional Board accepts all of the City's comments and reduces the violations accordingly, the number of punishable violations would be reduced from 71 to 18 (reducing the exempted violations from 18 to 16 and the penalized violations from 53 to 2). Therefore, this action would be a significant reduction of the City's Administrative

² This is in contrast to other permits that specify coliform is to be reported as a rolling median. (See, e.g., the City's current permit Order No. R5-2007-0113, effective November 5, 2007.)

Civil Liability (from \$159,000 to \$6,000).

The City would like to note that we are in the process of making a number of improvements to the WPCF processes in an effort to meet future surface water discharge limits and to help meet long-term land management needs, in addition to the 2005 installation of tertiary filtration and UV disinfection facilities. The successful completion of these improvements requires the completion of various studies, a great deal of effort, and expenditure of significant resources. Therefore, the City requests that the Regional Board consider these efforts, and the City's need to direct significant monetary resources to complete them, when evaluating the violations applied to the WPCF.

We appreciate the Regional Board's consideration of this matter. Following your review of this letter, we would like to schedule a meeting with the appropriate Regional Board staff to further discuss the suitable resolution of this issue.

Sincerely,



Charles E. Swimley, Jr., P.E.
Water Services Manager

CES/myn

Enclosures

cc: **Blair King, City Manager**
D. Stephen Schwabauer, City Attorney
F. Wally Sandelin, Public Works Director
Del Kerlin, Wastewater Treatment Superintendent
Kathryn Gies, West Yost & Associates, 131A Stony Circle, Ste. 100

Summary of Tentative MMP Violations and City Responses

Serial Number	Date	Violation Type	City's Position	Penalty
1	24-Feb-00	pH	Accept	Exempt
2	21-Oct-00	Daily Coliform	Count as one (1) violation due to upset conditions	Exempt
3	28-Oct-00	Daily Coliform		
4	11-Nov-00	Daily Coliform		
5	28-Jan-01	pH	Accept	Exempt
6	22-Feb-01	Daily Coliform	Accept	Exempt
7	26-Feb-01	pH	Accept	Not Exempt
8	22-Oct-01	TSS	Accept	Exempt
9	07-Feb-02	Daily Coliform	Accept	Exempt
10	13-Nov-02	TSS	Accept	Exempt
11	24-Dec-02	Daily Coliform	Accept	Exempt
12	06-Mar-03	Daily Coliform	Accept	Exempt
13	01-Feb-05	7-Day Coliform	Eliminate due to sampling error during start-up or count as three (3) violations of the fixed 7-day median (Monday – Sunday)	N/A
14	02-Feb-05	7-Day Coliform		
15	03-Feb-05	7-Day Coliform		
16	04-Feb-05	7-Day Coliform		
17	05-Feb-05	7-Day Coliform		
18	06-Feb-05	7-Day Coliform		
19	07-Feb-05	7-Day Coliform		
20	08-Feb-05	7-Day Coliform		
21	09-Feb-05	7-Day Coliform		
22	10-Feb-05	7-Day Coliform		
23	11-Feb-05	7-Day Coliform		
24	12-Feb-05	7-Day Coliform		
25	13-Feb-05	7-Day Coliform		
26	14-Feb-05	7-Day Coliform		
27	15-Feb-05	7-Day Coliform		
28	16-Feb-05	7-Day Coliform		
29	17-Feb-05	7-Day Coliform		
30	19-Feb-05	7-Day Coliform		
31	20-Feb-05	7-Day Coliform		

Summary of Tentative MMP Violations and City Responses, continued

Serial Number	Date	Violation Type	City's Position	Penalty
		7-Day Coliform	Count as one (1) violation due to process upset, or count as two (2) violations: one (1) violation of the daily maximum and one (1) violation of the fixed 7-day median (Monday – Sunday)	Exempt
33	08-Nov-05	Daily Coliform		
34	09-Nov-05	7-Day Coliform		
35	10-Nov-05	7-Day Coliform		
36	11-Nov-05	7-Day Coliform		
38	12-Nov-05	7-Day Coliform		
39	13-Nov-05	7-Day Coliform		
37	11-Nov-05	pH	Eliminate due to accuracy of sampling equipment	Exempt
40	29-Nov-05	Daily Coliform	Accept	Exempt
41	30-Nov-05	7-Day Coliform	Eliminate because not a violation of the fixed 7-day median (Monday – Sunday)	N/A
42	01-Dec-05	7-Day Coliform		
43	02-Dec-05	7-Day Coliform		
44	04-Dec-05	7-Day Coliform		
45	05-Dec-05	7-Day Coliform		
46	23-Dec-05	Daily Coliform	Eliminate due to no surface water discharge	N/A
47	03-Apr-06	Daily Coliform	Accept	Exempt
48	13-Oct-06	Daily Coliform	Accept	Exempt
49	30-Oct-06	Daily Coliform	Accept	Exempt
50	12-Mar-07	Daily Coliform	Accept	Exempt
51	17-Mar-07	7-Day Coliform	Count as one (1) violation of the fixed 7-day median (Monday – Sunday)	Not Exempt
52	18-Mar-07	7-Day Coliform		
53	04-Sep-07	Daily Coliform	Accept	Exempt

Summary of Tentative MMP Violations and City Responses, continued

Serial Number	Date	Violation Type	City's Position	Penalty
54	14-Sep-07	7-Day Coliform	Eliminate because violations were caused in accordance with an operations plan that was submitted to the Regional Board at least 30 days ahead of the construction activity, or count as three (3) violations, one (1) violation of the daily maximum and two (2) violations of the fixed 7-day median (Monday – Sunday)	N/A
55	15-Sep-07	Daily Coliform		
56	15-Sep-07	7-Day Coliform		
57	16-Sep-07	7-Day Coliform		
58	17-Sep-07	7-Day Coliform		
59	18-Sep-07	7-Day Coliform		
60	19-Sep-07	7-Day Coliform		
61	20-Sep-07	7-Day Coliform		
62	21-Sep-07	7-Day Coliform		
63	22-Sep-07	7-Day Coliform		
64	24-Sep-07	7-Day Coliform		
65	25-Sep-07	7-Day Coliform		
66	26-Sep-07	7-Day Coliform		
67	27-Sep-07	7-Day Coliform		
68	28-Sep-07	7-Day Coliform		
69	29-Sep-07	7-Day Coliform		
70	30-Sep-07	7-Day Coliform		
71	20-Dec-07	Daily Coliform	Eliminate due to sampling error	N/A

RESOLUTION NO. 2008-182

A RESOLUTION OF THE LODI CITY COUNCIL AUTHORIZING
THE CITY MANAGER TO EXECUTE A 'WAIVER OF 90-DAY
HEARING REQUIREMENT FOR ADMINISTRATIVE CIVIL LIABILITY
COMPLAINT' FOR THE PURPOSE OF REMITTING PAYMENT FOR
THE CIVIL LIABILITY OF \$21,000 TO THE CALIFORNIA REGIONAL
WATER QUALITY CONTROL BOARD FOR ALLEGED DISCHARGE
VIOLATIONS AND FURTHER APPROPRIATING FUNDS

=====

WHEREAS, the California Water Code Section 13385 allows the California Regional Water Quality Control Board (Board) to impose administrative civil liabilities (fines) for each discharge violation that qualified for a Mandatory Minimum Penalty (MMP); and

WHEREAS, the current MMP for both serious and non-serious violations is \$3,000 per occurrence; and

WHEREAS, on May 19, 2008, the City of Lodi received a draft Administrative Civil Liability Complaint (ACLC) from the Board outlining alleged MMPs for 53 non-serious discharge violations totaling \$159,000, which occurred over the eight-year period between January 1, 2000 and December 31, 2007; and

WHEREAS, the City's wastewater consultants (West Yost & Associates), along with legal counsel (Somach, Simmons and Dunn), assisted staff in preparing a June 16, 2008, response to the Board that outlined the City's position and contended only 2 of the 53 violations (\$6,000) qualified as MMPs; and

WHEREAS, upon review of the City's June 16, 2008, response, the Board agreed to reduce the MMPs from \$159,000 to \$21,000 and issued ACLC No. R5-2008-0562; and

WHEREAS, staff believes we have reached a point of diminishing returns in negotiating the fine and the costs of engaging Board staff.

NOW, THEREFORE, BE IT RESOLVED that the Lodi City Council does hereby authorize the City Manager to execute a 'Waiver of 90-Day Hearing Requirement for Administrative Civil Liability Complaint' to waive the Board hearing requirement in accordance with the terms of **Item No. 4** and remit payment for the reduced civil liability of \$21,000 for alleged discharge violations occurring between January 1, 2000 and December 31, 2007; and

BE IT FURTHER RESOLVED that funds in the amount of \$21,000 be appropriated from the Wastewater Fund for this payment.

Dated: September 3, 2008

=====


I hereby certify that Resolution No. 2008-182 was passed and adopted by the City Council of the City of Lodi in a regular meeting held September 3, 2008, by the following vote:

AYES: COUNCIL MEMBERS – Hansen, Hitchcock, Johnson, Katzakian,
and Mayor Mounce

NOES: COUNCIL MEMBERS – None

ABSENT: COUNCIL MEMBERS – None

ABSTAIN: COUNCIL MEMBERS – None



RANDI JOHL
City Clerk